

No. 83 - 1453

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ALEXANDER L. STEVAS,
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

BOARD OF REVIEW OF WILL COUNTY; and LYMAN C. TIEMAN, TED GRABAVOY, and HERMAN L. OLIVO, individually and as members of the Board of Review of Will County; and WILL COUNTY, ILLINOIS,

Petitioners,

v.

BEVERLY BANK, Trustee under Trust No. 8-3130; and DEMETRIOS DELLAPORTAS, PAUL COMET and MICHAEL HALIKIAS, Beneficiaries, and ALL MOTOR PARTS, INC., a corporation, on their own behalf and on behalf of all individuals similarly situated,

Respondents.

On Petition For A Writ Of Certiorari To The
Appellate Court Of Illinois, Third Judicial District

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether county officials who intentionally engage in the unlawful administration of a state statute fair on its face, causing unequal application to those who are entitled to be treated alike, violate the equal protection clause of the Fourteenth Amendment if the discrimination is intentional or purposeful.

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RESPONDENTS' BRIEF IN OPPOSITION

Respondents Beverly Bank, Trustee under Trust No. 8-3130, Demetrios Dellaportas, Paul Comet, Michael Halikias and All Motor Parts, Inc.* respectfully request that this Court deny the petition for a writ of certiorari, seeking review of the decision of the Appellate Court of the State of Illinois, Third Judicial District, in this case.

* Pursuant to Supreme Court Rule 28.1, neither respondents Beverly Bank nor All Motor Parts, Inc. have any parent, subsidiary or affiliated companies.

COUNTERSTATEMENT OF FACTS

Respondents submit that petitioners' statement of facts is incomplete. Respondents adopt for their statement of facts, the facts as set forth in the opinion of the court below.¹

REASONS WHY THE WRIT SHOULD BE DENIED

THE ILLINOIS APPELLATE COURT'S HOLDING THAT LOCAL TAXING OFFICIALS DENIED RESPONDENTS EQUAL PROTECTION OF THE LAW BY UNLAWFULLY CREATING AND INTENTIONALLY DISCRIMINATING AGAINST CERTAIN CLASSES OF TAXPAYERS IS CONSISTENT WITH THE DECISIONS OF THIS COURT AND EVERY OTHER COURT WHICH HAS ADDRESSED THE ISSUE.

By imposing liability on local taxing officials who systematically deprived certain classes of taxpayers of protection guaranteed them by Illinois law, the Illinois Appellate Court simply applied a principle long ago established in a series of decisions of this Court and unwaveringly followed by the lower courts. The appellate court held that county officials who intentionally engage in the "unlawful administration of a state statute fair on its face, causing unequal application to those who are entitled to be treated alike," violate the equal protection clause of the Four-

¹ The text of the opinion of the Illinois Appellate Court, Third Judicial District, is set forth in the Appendix to petitioners' Petition For A Writ Of Certiorari, Etc., and need not be reproduced here.

teenth Amendment if "the discrimination [is] intentional or purposeful." (Petition for a Writ of Certiorari, Etc. at 9a). The appellate court's ruling is well founded in the decisions of this Court.

Petitioners' primary complaint is that the appellate court erred by giving due consideration to the Court's opinion in *Snowden v. Hughes*, 321 U.S. 1, 9 (1944), in which this Court "used as a 'familiar example' of the denial of equal protection 'the failure of state taxing officials to assess property for taxation on a uniform standard of valuation as required by the assessment laws.'" (Petition at 10a). Petitioners' suggestion that the rationale of *Snowden* is at odds with cases decided prior to *Snowden* is certainly no compelling reason for this Court to review a state court's decision which affects only a local controversy. Moreover, petitioners' suggestion is incorrect. *Snowden* is not inconsistent with other decisions of this Court; indeed, *Snowden* itself relies on a series of decisions which hold that systematic discrimination in taxation in violation of state law constitutes a violation of the equal protection clause. See, e.g., *Great Northern Ry. Co. v. Weeks*, 297 U.S. 135, 139 (1936); *Iowa-Des Moines Nat. Bank v. Bennett*, 284 U.S. 239, 241 (1931); *Cumberland Coal Co. v. Board of Revision of Tax Assessments in Greene County, Pa.*, 284 U.S. 23, 25 (1931); *Bohler v. Callaway*, 267 U.S. 479, 489 (1925).

Nashville, Chattanooga & St.L.Ry. v. Browning, 310 U.S. 362 (1940), upon which petitioners rely (Petition at 7), is neither inconsistent with *Snowden* nor with the decision of the court below. In *Browning*, the Court found no infringement of the equal protection clause only because the discriminatory conduct had been ongoing for forty years and amounted to a *de facto* classification of property which was sanctioned by the State. In this case, petitioners have admitted that they intentionally discrimi-

nated against certain property owners despite the prohibition of Illinois law.² Ill.Rev.Stat. (1979), ch. 120, ¶501a.

Not only is *Snowden* consistent with its predecessors but, as the appellate court noted, "the principles laid down [in that case] for defining equal protection violations have withstood the test of time . . ." (Petition at 10a). Lower federal courts and state courts have uniformly applied the principles set forth in *Snowden* to cases with facts virtually identical to the instant case and have arrived at the same conclusion as the court below. See, *Louisville & Nashville R. Co. v. Public Service Commission*, 631 F.2d 426 (6th Cir. 1980), cert. denied, 450 U.S. 959 (1981); *Weissinger v. Boswell*, 330 F.Supp. 615 (M.D. Ala. 1971); *Louisville & Nashville R. Co. v. Public Service Commission*, 249 F.Supp. 894 (M.D. Tenn. 1966), aff'd, 389 F.2d 247 (6th Cir. 1968); *Bussie v. Long*, 286 So.2d 689 (La. App. 1973); *Baldwin Construction Co. v. Essex County Board of Taxation*, 16 N.J. 329, 108 A.2d 598 (1954). There is no difference of opinion among the courts as to the issues raised in the instant petition, and certainly no need for a definitive pronouncement by this Court on a principle that has been established for over forty years.

Part II of the Petition displays a truly extraordinary analysis of the Fourteenth Amendment, but offers no

² Significantly, petitioners concede that "[a]pplying different rates of taxation to property *within the same class*, violates the federal Constitution" (Petition at 6, emphasis in original), overlooking the fact that that is precisely what happened in the instant case. Under Illinois law, classes of property can be established only by enactment of an appropriate ordinance by a county board of commissioners. The Will County Board did not enact such an ordinance. Therefore, industrial real property, commercial real property, and personal property, which were the targets of petitioners' discriminatory conduct, are in the same class as residential, argicultural, and all other types of property.

ground whatsoever for review by this Court of the lower court's ruling. Petitioners seem to contend that whenever a party claims that it was denied equal protection of the law with regard to an interest in property, the party is actually invoking something petitioners call the "substantive aspect of the due process clause." (Petition at 9). Petitioners suggest that there is "some overlap" in the concepts of equal protection and due process because, in instances where there is purposeful discrimination in violation of the equal protection clause, the " 'discrimination may be so unjustifiable as to be violative of due process' " as well. (Petition at 10, quoting *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954)). According to petitioners, equal protection and due process violations are essentially the same, and thus an injured party is barred from raising a claim under the equal protection clause whenever there exists an alternative forum for a hearing.

Not surprisingly, petitioners offer no support for their confused depiction of the Fourteenth Amendment. Further, petitioners' attempt to meld the equal protection clause into the due process clause, even if doctrinally valid, does not work under the facts of this case. In proving their equal protection claim, respondents will not, as petitioners contend, "be focusing on the irrationality of the [petitioners'] action." (Petition at 10). Respondents are going to prove that petitioners intentionally discriminated against them and others similarly situated in the administration of a state statute. It will be petitioners who will somehow try to demonstrate the rationality of their unlawful creation of and purposeful discrimination against classes of taxpayers in Will County, Illinois—conduct which has already been condemned by the Illinois courts and legislature.

Petitioners' denials notwithstanding (Petition at 11), all that petitioners are arguing in Part II is that respondents

must exhaust state administrative remedies prior to pursuing a claim under the equal protection clause in state court. The Illinois courts have rejected petitioners' argument, finding that judicial relief from unconstitutional conduct is entirely compatible with the Illinois administrative process.

Finally, petitioners' suggestion that this case presents issues that "extend far beyond" a state court dispute between Will County tax officials and a plaintiff class of injured taxpayers is exaggeration at best. (Petition at 11). Indeed, the Illinois Supreme Court denied petitioners' Petition for Leave to Appeal from the lower court's ruling, implying that that court did not perceive the issues in this case to extend even beyond the borders of Will County, Illinois.

CONCLUSION

For all the foregoing reasons, respondents pray that the writ of certiorari be denied.

Respectfully submitted,

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